

enrollment certification or other document submitted by the institution of learning. That enrollment certification or other document must contain a certification showing the following information:

- (i) The reservist is eligible for educational assistance;
- (ii) He or she has been accepted by the educational institution or is eligible to continue his or her training there;
- (iii) He or she has notified the educational institution of his or her intention to attend that institution or to re-enroll in it;
- (iv) The number of credit hours the reservist intends to pursue; and
- (v) The beginning and ending dates of the enrollment period.

(2) VA may pay educational assistance in advance only if

- (i) The reservist specifically requests such a payment;
- (ii) The educational institution at which the reservist is accepted has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery or return of advance checks and certifications of delivery and enrollment, and
- (iii) The Director of the VA facility of jurisdiction has not ruled under paragraph (d)(3) of this section that advance payments should not be made.

(3) The Director of a VA facility of jurisdiction may direct that advance payments not be made to reservists enrolled at an educational institution if—

- (i) The educational institution demonstrates an inability to comply with the requirements of paragraph (d)(4) of this section, or
- (ii) The educational institution fails to provide adequately for the safekeeping of the payment checks before delivery to the reservist or return to the VA, or
- (iii) He or she determines, based upon compelling evidence, that the educational institution demonstrates its inability to discharge its responsibilities under advance payment program.

(4) VA shall mail the advance payment check, made payable to the reservist, to the educational institution for delivery to the reservist upon registration. The educational institution

shall not deliver the advance payment check to the reservist more than 30 days in advance of the commencement of his or her program. If delivery is not made within 30 days after the commencement of the program, the educational institution shall return the check to VA.

(5) The advance payment shall be in an amount not to exceed the educational assistance due for the month or fraction thereof in which the course will begin plus the educational assistance for the following month.

(6) VA will authorize advance payment only at the beginning—

- (i) Of an ordinary school year, or
- (ii) Of any other enrollment period which begins after a break of 30 days or more, provided the reservist is not eligible for payment for the break.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(d); Pub. L. 98-525)

(e) *Frequency of payment.* Except as provided in paragraph (d) of this section, VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98-525)

(f) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98-525)

(Approved by Office of Management and Budget under control number 2900-0073)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29306, June 10, 1996; 61 FR 29482, June 11, 1996]

#### **§ 21.7642 Nonduplication of educational assistance.**

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. Chapter 1606 and any of the following provisions of law—

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- (1) 38 U.S.C. ch. 30;
- (2) 38 U.S.C. ch. 31;
- (3) 38 U.S.C. ch. 32;
- (4) 38 U.S.C. ch. 34;
- (5) 38 U.S.C. ch. 35;
- (6) 10 U.S.C. ch. 107;

(7) Section 903 of the Department of Defense Authorization Act, 1981;

(8) The Hostage Relief Act of 1980; or

(9) The Omnibus Diplomatic Security Act of 1986.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3695; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(b) *Election of benefits.* When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3695; Pub. L. 98-525)

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525)

(e) *Service Members Occupational Conversion and Training Act of 1992.* A reservist may not receive educational assistance under the Montgomery GI

Bill—Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 61 FR 20729, May 8, 1996; 61 FR 29307, June 10, 1996]

### § 21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§ 21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See § 21.7633.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690(b); Pub. L. 98-525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund—

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by VA under § 1.957 of this chapter.

(Authority: 10 U.S.C. 16135; Pub. L. 98-525)

(c) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless—

(i) The overpayment is waived as provided in § 1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of—

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course,